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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/831,432

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Rita Koester

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09/26/2007

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PATENT DEPARTMENT  
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EXAMINER

OGDEN JR, NECHOLUS

ART UNIT

PAPER NUMBER

1751

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/831,432

Applicant(s)

KOESTER ET AL.

Examiner

Necholus Ogden

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7-25-2007 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 14-17, 25-28, 31, 33-35 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP 05-202382.

JP '382 disclose a detergent composition useful for dish washers comprising 1-10% by weight of a nonionic surfactant of formula I which is an alkoxylated carboxylic ester; 1-40% by weight of builder such as citrates, polycarboxylic acid copolymers (see abstract).

As this reference teaches all of the instantly required it is considered anticipatory.

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2. Claims 18-19, 24, 29-30 and 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP (05-202382) in view of Haerer et al (5,602,093).

JP '382 is relied upon as set forth above. JP '382 lacks the inclusion of an additional nonionic surfactant such as alkyl polyglucoside and alkyl polyglycol ethers.

Haerer et al '093 disclose a rinse aid for dishwashing machines comprising alkyl polyglycoside and alkyl polyglycol ethers (see abstract and col. 2, lines 24-34).

It would have been obvious to one of ordinary skill in the dishwashing art to include the alkyl polyglycoside and/or alkyl polyglycol ether surfactants of Haerer et al '093 because both prior art references teach the use of surfactants for automatic dishwashing and Haerer et al '093 teach that the aforementioned surfactants ecologically and toxicologically satisfactory and are equivalent in performance properties to commercial rinse aids and do not have any disadvantages (col. 2, lines 15-20). Moreover, "It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art." In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980).

3. Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP (05-202382) in view of Lewis (5,612,305).

JP '382 is relied upon as set forth above. JP '382 lacks the inclusion of applicant's specific alkyl polyglycol ether.

Lewis discloses a mixed surfactant system for low foam applications such as machine dishwashing wherein said surfactants include fatty alcohol polyalkylene glycol ethers wherein the alkylene unit consist of propylene groups (abstract; see formula III, col. 4, lines 15-25 and col. 5, line 5-col. 6, line 9).

It would have been obvious to one of ordinary skill in the art to include the specific polyglycol ethers of Lewis to the compositions of JP '382 because each reference is specific to auto dishwashing and Lewis teaches that said nonionic polyglycol ethers maintain low foam and defaming performance needed for automatic dishwashing and significantly reduces cost of other surfactants which form the major functional component(s) of the products used in these applications (col.4, lines 47-53).

Moreover, "It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art." In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980).

4. Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP (05-202382) in view of Kwetkat et al (6,156,721).

JP '382 is relied upon as set forth above. JP '382 lacks the inclusion of an additional nonionic surfactants hydroxyl mixed ether and/or N-alkyl glucamides.

Kwetkat et al disclose a cleansing composition useful for automatic dishwashing machines comprising 0.1 to 70% by weight of surfactant such as hydroxyl mixed ethers and N-methyl alkylglucamides (col. 9, lines 1-5; and col. 10, line 1-3).

It would have been obvious to one of ordinary skill in the dishwashing art to include the mixed ethers and alkylglucamides because both prior art references teach the use of surfactants for automatic dishwashing. Moreover, "It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art." In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980).

1. Claims 31-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hees et al (5,753,606) in view of Haerer et al (5,759,987).

Hees et al disclose a low foaming cleaning composition for hard surfaces comprising 0.1 to 50% by weight of an alkyl polyglycoside (col. 2, lines 13-27); fatty acid alkyl ester alkoxyates of formula (II) (col. 2, line 59-col. 3, line 24); and additional surfactants such as nonionic alkyl polyglycol ethers, fatty acid polyglycol ethers and mixtures thereof (col. 3, lines 47-55) and further an auxiliary agent such as citric acid, polyacrylates and butylenes glycol (col. 4, lines 10-21). Note, see example 11.

Hees et al disclose all of the instantly required except applicant's additional N-alkyl glucamide nonionic surfactant.

Haerer et al disclose a hard surface cleaning composition comprising mixed ethers, glycol ethers and further nonionic surfactants such as alkyl polyglycoside and/or fatty acid N-alkyl glucamide surfactants (col. 2, line 5-col. 3, line 5).

It would have been obvious to one of ordinary skill in the art to include the N-alkyl glucamide type nonionic surfactant of Haerer et al to the compositions of Hees et al because Hees et al invite the inclusion of nonionic surfactants such as alkyl polyglycosides and Haerer et al suggest the alkyl polyglycosides and N-alkyl glucamides are functional equivalent nonionic surfactants for hard surface cleaning compositions and an additional nonionic surfactant such as N-alkyl glucamides would aid at reducing the foaming as required by the teaching of Hees et al. Therefore, absent a showing to the contrary, one of ordinary skill in the art would expect synergistic and/or beneficial results by including a N-alkyl glucamide nonionic surfactant in the compositions of Hees et al.

Claims 31-36 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8; 1-12; 1-11 and 25; and 1-14 of U.S. Patent No. 6602838; 6384009; 6683035; and 6660706; respectively. Although the conflicting claims are not identical, they are not patentably distinct from each other because they overlap in subject matter pertaining to alkoxylated carboxylic acid esters with hydroxyl mixed ethers or alkyl polyglycoside or polyglycol ethers or N-alkylglucamides.

### ***Response to Arguments***

2. Applicant's arguments filed 7-25-2007 have been fully considered but they are not persuasive.

Applicant argues that they have not been able to obtain a translation and therefore cannot comment on JP '382, however, applicant further suggest that JP '382 does not teach the claimed compound.

The examiner has obtained a translation of JP '382 through AIPN and will provide applicant a copy of said translation with this communication. With respect to JP '382 suggesting applicant's claimed compound, the examiner respectfully disagrees and contends that the abstract clearly provides sufficient specificity for the alkoxyated fatty acid ester to be used in dishwashing formulations. (see above).

Applicant argues that Haerer et al do not disclose any alkoxyated fatty acid esters or provide an incentive to combine with JP '382 since both appear to be complete rinse aid formulations.

The examiner contends that Haerer et al is only relied upon to show the inclusion of alkyl polyglycosides and alkyl polyglycol ethers in dishwashing compositions. Moreover, each of the references employs conventional nonionic surfactants wherein the skilled artisan would expect equivalent results in the absence of a showing of unexpected results to the contrary.

Applicant argues that Lewis cannot be combined with JP '382 without under experimentation, since Lewis teaches that not all nonionic surfactants are compatible.

The examiner contends that both reference are analogous and the alkyl polyglycol ether of Lewis is well known additive in auto dishwashing as suggested by Lewis in (col. 4, lines 47-53). Moreover, the compatibility test disclosed in Lewis refers to a specific mixture of nonionic surfactants such as propylene oxide capped and



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ethoxylated nonionic surfactants and mixtures thereof. Therefore, absent a showing to the contrary artisan of ordinary skill would have been motivated to include the polyglycol ether of Lewis to maintain low foam and defaming performance needed for automatic dishwashing and significantly reduces cost of other surfactants which form the major functional component(s) of the products used in these applications (col.4, lines 47-53).

Applicant argues that JP '382 and Kwetkat et al does not teach or suggest the claimed invention and Kwekat et al teach that said compositions must contain Gemini surfactants. Also, applicant further argues that any reference that suggest the use of anionic, nonionic and Gemini surfactants mixtures would neither teach or suggest the use of additional nonionic for the practice of the present invention.

The examiner contends that the arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); In re Geisler, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997) ("An assertion of what seems to follow from common experience is just attorney argument and not the kind of factual evidence that is required to rebut a prima facie case of obviousness.").

Applicant argues that Hees requires anionic surfactants, which are excluded by the claimed invention.

Again, the examiner contends that it appears that applicant does not have literal support for said insertion. Moreover, the anionic surfactant free limitation has been stricken from the claim. Therefore, applicant's invention may include additional surfactants such as anionic surfactants and Hees is a valid reference which provide

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support for additional surfactants as suggested, in the absence of a showing to the contrary.

Applicant argues that Haerer et al do not disclose any alkoxyated fatty acid esters and therefore would not be compatible with Haerer.

The examiner contends that Haerer et al is only relied upon to show the inclusion of N-alky glucamides in dishwashing compositions and one of ordinary skill in the art would have been motivated to include additional surfactants because only synergistic or beneficial cleaning results would have been obtained with the combination of additional surfactants.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Nicholas Ogden  
Primary Examiner  
Art Unit 1751

No  
9-21-2007